

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY LUTES,

Defendant-Appellant.

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UNPUBLISHED

March 18, 2003

No. 237790

Wayne Circuit Court

LC No. 00-010604

Before: Griffin, P.J., and Neff and Gage, JJ.

MEMORANDUM.

Defendant was convicted by a jury of second-degree home invasion, MCL 750.110a(3), for which he was sentenced as a fourth habitual offender, MCL 769.12, to serve a prison term of sixteen to fifty years. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that insufficient evidence was presented to support his conviction of second-degree home invasion. Specifically, defendant argues that the circumstantial evidence merely demonstrated that he possessed the stolen property, not that he broke into the victim's home and stole the property. Citing *People v Atley*, 392 Mich 298; 220 NW2d 465 (1974), defendant argues that the prosecution's case was improperly built upon multiple inferences. However, the "inference upon inference" rule established in *Atley* and its progeny has been overruled by the Michigan Supreme Court in *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Thus, a trier of fact is not precluded from making multiple inferences in reaching its decision as long as each inference is independently supported by established fact. *Id.*

A person who breaks and enters a dwelling with intent to commit a felony or a larceny in the dwelling or a person who enters a dwelling without permission with intent to commit a felony or a larceny in the dwelling is guilty of second-degree home invasion. MCL 750.110a(3). Evidence of possession of stolen property is insufficient to support a conviction of home invasion, unless accompanied by other facts or circumstances indicating guilt. *People v Toole*, 227 Mich App 656, 660-661; 576 NW2d 441 (1998); *People v Rankin*, 52 Mich App 130, 132-134; 216 NW2d 620 (1974). Circumstantial evidence and reasonable inferences drawn from the evidence may be sufficient to prove the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

Here, the evidence demonstrated that, when arrested, defendant was in the vicinity of the complainant's home and in possession of numerous items of stolen property, later identified as the complainant's property. Defendant was apprehended soon after the offense, and a fresh set of footprints tracked him from the complainant's house to the location where he was arrested. The evidence, viewed in a light most favorable to the prosecution, was sufficient to permit the jury to find that the elements of the offense had been proven beyond a reasonable doubt. See *Rankin, supra*.

Affirmed.

/s/ Richard Allen Griffin

/s/ Janet T. Neff

/s/ Hilda R. Gage